

## § 308.140

Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

### § 308.140 Newspaper notice.

(a) *General rule.* If the Board of Directors or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain the name and address of the issuer and the name and title of the applicant, the exemption sought, a statement that a hearing will be held, and a statement that within 30 days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

### § 308.141 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.140, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

### § 308.142 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the APA (5 U.S.C. 554-557), the Uniform Rules and § 308.108 of sub-

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part B of the Local Rules shall not apply to hearings under this subpart.

(b) *Hearing Procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) There shall be no discovery in proceeding under this subpart J.

(3) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(4) The proceedings shall be on the record and the transcript shall be promptly submitted to the Board of Directors. The presiding officer shall make recommendations to the Board of Directors, unless the Board of Directors, in its sole discretion, directs otherwise.

### § 308.143 Decision of Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board of Directors may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

## Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

### § 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection

with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

**§ 308.145 Conduct of investigation.**

An investigation conducted pursuant to section 10(c) of the FDIA shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Supervision and Consumer Protection (DSC), the Director of the Division of Depositor and Asset Services, or their respective designees as set forth at § 303.272 of this chapter. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

[56 FR 37975, Aug. 9, 1991, as amended at 60 FR 31384, June 15, 1995; 64 FR 62100, Nov. 16, 1999]

**§ 308.146 Powers of person conducting investigation.**

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The per-

sons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has been guilty of contemptuous conduct. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

**§ 308.147 Investigations confidential.**

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

**§ 308.148 Rights of witnesses.**

In an investigation pursuant to section 10(c):

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by a counsel who meets the requirements of § 308.6 of the Uniform Rules. That counsel may be present and may:

(1) Advise the witness before, during, and after such testimony;

(2) Briefly question the witness at the conclusion of such testimony for clarification purposes; and

(3) Make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of